

Donna Kendall

November 18, 2005

Springfield, IL

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1 administered your chemotherapy?

2 A No.

3 Q Who administered your chemotherapy?

4 A Dr. Benjamin Esparaz.

5 Q How do you spell--

6 A E-S-P-E-R-E-Z.

7 Q Did Dr. Esparaz, strike that.

8 Was Dr. Esparaz the only physician who
9 administered chemotherapy to you?

10 A Yes.

11 Q Did Dr. Esparaz also administer radiation
12 treatment?

13 A No.

14 Q Who administered the radiation treatment?

15 A Dr. Edmond Elliot.

16 Q Do you believe that Dr. Esparaz
17 prescribed drugs to you based on what he believed
18 to be in your best medical interest?

19 A Yes.

20 Q Do you believe that Dr. Esparaz has
21 conspired with drug companies to defraud you?

22 A No.

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1 Q Besides Dr. Esparaz, Dr. Elliot and Dr.
2 Zacheis, have you seen any other physicians
3 regarding cancer?

4 A Plastic surgeon.

5 Q What's that physician's name?

6 A Dr. Stewart Baker.

7 Q Do you believe that all of the four
8 doctors you just listed had your best medical
9 interests at heart?

10 A Yes.

11 Q Do you believe that Dr. Esparaz made a
12 profit on the drugs administered to you?

13 A No.

14 Q Do you believe it would be okay if Dr.
15 Esparaz made a profit on the drugs administered to
16 you?

17 A I don't have any thought about that.

18 Q Where does Dr. Esparaz work?

19 A Cancer Care Specialists of Central
20 Illinois. It's in Decatur.

21 Q Is that a hospital?

22 A It's a building of its own. It's like a

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1 you?

2 A Yes.

3 Q Do these records reflect your being
4 prescribed the drug Kytril? And I can help you
5 out. If you look on page 4.

6 MR. SCOTT: Do you want her to look through the
7 whole document?

8 MR. ROBACK: Q If you look on page 4 under
9 12/5/02.

10 A Yes.

11 Q Should be the last entry there. Do you
12 see that?

13 A Yes.

14 Q Do you recall actually taking Kytril?

15 A Yes.

16 Q What is the basis for that recollection?

17 A They gave it to me, some samples in pill
18 form. Then I was told that it was also in the
19 chemotherapy cocktail.

20 Q And was it Dr. Esp  raz's nurses who told
21 you it was in the cocktail?

22 A Yes.

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1 Q Dr. Esparaz ever tell you it was in the
2 cocktail?

3 A I don't recall.

4 Q When according to these records is the
5 first time that you were prescribed Kytril?

6 MR. SCOTT: Do you want her to look through all
7 the records?

8 MR. ROBACK: Well, they're done by date,
9 Counsel. So it should be, if she sees one before
10 December 5th, 2002 she's welcome to point it out.

11 THE DEPONENT: I believe that that's probably
12 the first.

13 MR. ROBACK: Q December 5th, 2002?

14 A Correct.

15 Q To your knowledge were you administered
16 Kytril prior to December 5th, 2002?

17 A Not to my knowledge.

18 Q Do these records reflect who manufactures
19 Kytril?

20 A No.

21 Q Do these records reflect the charge for
22 Kytril?

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1 MR. SCOTT: Object. The records speak for
2 themselves.

3 MR. ROBACK: Are you okay?

4 MR. SCOTT: Shall we take a short break?

5 (Whereupon a short break was taken.)

6 MR. ROBACK: Q Ms. Kendall, we're back from
7 a short break. Turning your attention back to
8 Exhibit Kendall 003, do these records reflect the
9 charge for Kytril?

10 MR. SCOTT: To the extent you know.

11 THE DEPONENT: They seem to, yes.

12 MR. ROBACK: Q And what charge is that?

13 A \$350.

14 Q Do these records reflect the charge for
15 Kytril being based on average wholesale price or
16 AWP?

17 A I wouldn't know AWP.

18 Q Do these records reflect how the charges
19 for Kytril were determined?

20 A No.

21 Q Do these records reflect your being
22 prescribed Cytoxan? And I can I guess direct your

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1 attention. Still on December 5th, 2002 for the
2 drug Cyclophosphamid, which I'll represent may or
3 may not be Cytosan, but that at least is the
4 closest representation on this document that I was
5 able to find.

6 A The record shows that.

7 Q That you were prescribed or the record
8 lists Cyclophosphamid?

9 A Yes, it does.

10 Q Do you see the word Cytosan in the
11 record?

12 A Not on that date.

13 MR. SCOTT: Do you want her to look through the
14 whole document?

15 MR. ROBACK: Sure. She can look through it and
16 let me know if you see Cytosan.

17 MR. SCOTT: We're willing to stipulate that the
18 exhibit speaks for itself and if you're willing to
19 say whether or not Cytosan appears within the 30
20 some odd pages here, we'll take your word for it,
21 Counsel, and move on from there.

22 MR. ROBACK: Fair enough. I mean I'll

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1 represent that I at least did not see the word
2 Cytosan.

3 THE DEPONENT: I don't see that word.

4 MR. SWEENEY: Mr. Tom Sweeney. Nor did I.

5 MR. ROBACK: Q Do you know, Ms. Kendall, if
6 Cyclophosphamid is necessarily the drug Cytosan?

7 A I don't know that.

8 Q Do you know if it could be the drug
9 Neosar?

10 A I don't know that.

11 Q When according to these records is the
12 first time that you were prescribed
13 Cyclophosphamid?

14 A The first that I see it is on the 5th of
15 December.

16 Q 2002?

17 A Correct.

18 Q To your knowledge were you prescribed
19 Cyclophosphamid prior to December 5th, 2002?

20 A No.

21 Q Do these records reflect who manufactured
22 Cyclophosphamid?

Donna Kendall

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1 A I don't see that.

2 Q So your answer is no?

3 A No.

4 Q Do these records reflect a charge for
5 Cyclophosphamid?

6 A Yes.

7 Q And what's that charge?

8 A \$107.80.

9 Q Do these records reflect the charge for
10 Cyclophosphamid being based on average wholesale
11 price or AWP?

12 A I would not know.

13 Q Do these records reflect how the charges
14 for Cyclophosphamid were determined?

15 A No.

16 Q Do these records reflect your being
17 prescribed the drug Rubex? And I'll direct your
18 attention to page 4 again with the first entry
19 under Dr. Zacheis' name is Doxorubicin, which I'll
20 represent may or may not be the drug Rubex.

21 A I see that.

22 MR. SCOTT: What was the question? I'm sorry.

Donna Kendall

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1 MR. ROBACK: Q Do you see, do these records
2 reflect your being prescribed the drug Rubex?

3 MR. SCOTT: Do you want her to go through the
4 records in their entirety or do you know that it's
5 not in there?

6 MR. ROBACK: Based on my review of the records
7 I do not see the word Rubex. If you're willing to
8 have the same stipulation.

9 MR. SCOTT: The records speak for themselves
10 and we'll take you at your word that Rubex is not
11 listed in here.

12 MR. ROBACK: Q Ms. Kendall, do you see it
13 listed?

14 A Not under the name of Rubex.

15 MR. SCOTT: Do you want her to go through the
16 whole record or do you want to go with the
17 stipulation that we'll take you at your word that
18 it's not listed in there?

19 MR. ROBACK: I think the witness answered the
20 question but if she sees it.

21 Q Do you see the word Rubex?

22 A I don't.

Donna Kendall

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1 Q Do you know if Doxorubicin is necessarily
2 the drug Rubex?

3 A I don't know that.

4 Q You mentioned earlier the drug
5 Adriomycin. Do you know if Doxorubicin could also
6 be as Adriomycin?

7 A I don't know that.

8 Q When according to these records is the
9 first time that you were prescribed Doxorubicin?

10 A Shows 12/5, I believe.

11 Q 2002?

12 A Correct.

13 Q To your knowledge were you prescribed
14 Doxorubicin prior to December 5th, 2002?

15 A No.

16 Q Do these records reflect who manufactures
17 Doxorubicin?

18 A No.

19 Q Do these records reflect any charges for
20 Doxorubicin being based on average wholesale price
21 or AWP?

22 A I wouldn't know if it was based on that.

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1 Q So these records do not reflect any
2 charges for Doxorubicin being based on AWP?

3 A I wouldn't know.

4 Q Do these records reflect how the charges
5 for Doxorubicin were determined?

6 A No.

7 Q Do these records reflect your being
8 prescribed Dexamethasone Sodium? I'm still looking
9 on page 4.

10 A On 12/05 I see Dexamethasone, one.

11 Q Is that the first time according to these
12 records that you were prescribed Dexamethasone?

13 A To my knowledge, yes.

14 Q Do these records reflect who manufactured
15 Dexamethasone?

16 A No.

17 Q If you were prescribed Dexamethasone
18 Sodium do you have any way of telling from these
19 records who manufactured--

20 A No.

21 Q (Continuing.)--it?

22 Do you know whether any charges for

Donna Kendall

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1 Dexamethasone were based on AWP or average
2 wholesale price?

3 A I don't know what it's based on.

4 Q Do these records reflect your being
5 prescribed Sodium Chloride?

6 MR. SCOTT: Do you want her to go through the
7 whole record?

8 MR. ROBACK: I can represent again I at least
9 did not see Sodium Chloride listed on the record.

10 MR. SCOTT: The record speaks for itself. We
11 can move on.

12 MR. ROBACK: Q Ms. Kendall, do you see
13 Sodium Chloride anywhere?

14 A No, I do not.

15 Q If you were administered Sodium Chloride
16 do you have any way of knowing what company would
17 have manufactured it?

18 A No, I do not.

19 Q Do you know whether any charges for
20 Sodium Chloride that may have been administered to
21 you would be based on AWP?

22 A No.

Donna Kendall

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1 Q Do these records reflect your being
2 prescribed Taxotere? And if you turn to page 8
3 towards the bottom of the page.

4 A Yes.

5 Q When according to these records is the
6 first time that you were prescribed Taxotere?

7 A 2/27/03.

8 Q Do these records reflect who manufactured
9 Taxotere?

10 A No.

11 Q So is it correct that based on these
12 records you're not able to determine who
13 manufactured Taxotere that may have been given to
14 you?

15 A That's correct.

16 Q Do you know whether any charges for
17 Taxotere were based on average wholesale price or
18 AWP?

19 A There's a charge there but I don't know
20 what it's based on.

21 Q Do these records reflect your being
22 prescribed the drug Procrit? And like before I can

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1 represent that I at least did not see it, but if
2 you see it, Ms. Kendall, please let me know.

3 MR. SCOTT: We'll take you at your word that it
4 doesn't say it, that you've reviewed them but if
5 you'd like her to review the entire document she
6 will.

7 THE DEPONENT: I don't see it.

8 MR. ROBACK: Q So then based on these
9 records is it correct that you do not know who
10 would have manufactured any Procrit that may have
11 been given to you?

12 A That's correct.

13 Q Do you know if any charges for Procrit
14 were based on average wholesale price or AWP?

15 A No, I do not know that.

16 Q Do you know if Procrit as opposed to
17 another similar drug was actually administered to
18 you?

19 A I don't know that.

20 Q Do these records reflect your being
21 prescribed Lidocaine?

22 MR. SCOTT: Do you have somewhere you want her

Donna Kendall

November 18, 2005

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1 to look?

2 MR. ROBACK: I can represent that I did not see
3 it.

4 THE DEPONENT: I don't see it.

5 MR. ROBACK: Q I'm sorry. Say that again,
6 Ms. Kendall.

7 A I don't see it.

8 Q So then is it correct that based on these
9 records you do not know who would have manufactured
10 any Lidocaine that may have been given to you?

11 A No, I don't.

12 Q Do you know whether any charges for
13 Lidocaine which would have been administered to you
14 would be based on average wholesale price or AWP?

15 A I don't know that.

16 Q Do you know if you were actually treated
17 with Lidocaine?

18 A No.

19 Q Do these records reflect your being
20 prescribed Lorazepam? And if you look at page 4 at
21 the top.

22 A Yes, I see that.

Donna Kendall

November 18, 2005

Springfield, IL

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1 Q When according to these records is the
2 first time that you were prescribed Lorazepam?

3 A 12/5/02.

4 Q To your knowledge were you prescribed
5 Lorazepam prior to December 5th, 2002?

6 A No.

7 Q Do these records reflect who manufactures
8 Lorazepam?

9 A No.

10 Q Do you know if you were actually given
11 Lorazepam?

12 A No.

13 Q Do these records reflect any charges for
14 Lorazepam being based on average wholesale price or
15 AWP?

16 A No.

17 Q Do you know how any charges for Lorazepam
18 that may have been administered to you were
19 determined?

20 A No, I don't.

21 Q Ms. Kendall, can you please turn to page
22 Kendall, the page Bates labeled Kendall 0021? Do

Donna Kendall

November 18, 2005

Springfield, IL

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1 22nd, 2002?

2 A Yes.

3 Q When is the first time that you recall
4 going to Cancer Care Specialists?

5 A On 11/22.

6 Q Do these records reflect charges
7 performed at Cancer Care Specialists such as
8 x-rays?

9 A Yes, they do.

10 Q Do these records reflect charges for
11 specific medication administered to you?

12 A It shows chemotherapy. Doesn't specify
13 what drug was in it.

14 Q So then this chart does not reflect
15 specific medication that was administered to you?

16 A No.

17 Q Do these records reflect how the, strike
18 that.

19 Do you see the column, it's the fourth
20 column from the left that says amount billed?

21 A Yes.

22 Q Do these records reflect how the numbers

Donna Kendall

November 18, 2005

Springfield, IL

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1 listed under the column amount billed were
2 determined?

3 A No.

4 Q Do these records reflect any charges
5 being based on AWP or average wholesale price?

6 A No.

7 Q Do these records reflect payments being
8 made based on AWP or average wholesale price?

9 A Not to my knowledge.

10 Q Does this document sometimes refer to
11 chemotherapy and office visits together? And if
12 you look on page 36 towards the--

13 A On which page?

14 Q 36. It should be the third page in the
15 exhibit but it's Bates labeled Kendall 36.

16 A Okay. I see that. Yes.

17 Q I'm going to mark--

18 MR. SCOTT: Are you done with that one for
19 now?

20 MR. ROBACK: For now.

21 Q I'm going to mark as Exhibit Kendall
22 005, it's a document that appears to contain copies

EXHIBIT 22

Sandra Jean Leef

November 8, 2005

Chicago, IL

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

---oOo---

In re: PHARMACEUTICAL

MDL DOCKET NO.

INDUSTRY AVERAGE WHOLESAL

CIVIL ACTION

PRICE LITIGATION

01CV12257-PBS

THIS DOCUMENT RELATES TO:

ALL ACTIONS

CERTIFIED COPY

Deposition of SANDRA JEAN LEEF, taken
before GREG S. WEILAND, CSR, RMR, CRR, Notary Public,
pursuant to the Federal Rules of Civil Procedure for
the United States District Court pertaining to the
taking of depositions, at Suite 2000, One North
LaSalle Street, in the City of Chicago, Cook County,
Illinois, commencing at 10:58 o'clock a.m., on the
8th day of November, 2005.

HENDERSON LEGAL SERVICES
202-220-4158

Sandra Jean Leef

November 8, 2005

Chicago, IL

20

1 Are you on any medication today that might
2 affect your testimony?

3 A. No.

4 Q. Okay. And you say you're feeling much
5 better now?

6 A. Oh, yeah, but it's -- well, the chemo
7 brain is still there, but that's going to take
8 another five years before it totally dissipates.

9 Q. Were you generally satisfied, generally
10 satisfied with the care provided by your doctors?

11 A. Oh, yeah.

12 Q. You don't have any complaints --

13 A. No.

14 Q. -- against them?

15 Do you have any complaints about the drugs
16 they selected for you?

17 A. I have no idea because I don't remember
18 what drugs they selected for me. They just did.

19 Q. Okay. Did you have a good relationship
20 with your doctors --

21 A. Oh, yeah.

22 Q. -- your oncologists?

Sandra Jean Leef

November 8, 2005

Chicago, IL

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1 MS. CONNOLLY: Objection to form.

2 BY MR. TRETTER:

3 Q. Do you feel that they would have
4 prescribed any drugs for financial reasons as
5 opposed to your clinical reasons?

6 MS. CONNOLLY: Objection, form, calls for
7 speculation.

8 You can answer.

9 THE WITNESS: I don't know. I wouldn't
10 think so, but I don't know.

11 BY MR. TRETTER:

12 Q. Did you have any discussions with your
13 doctors at the time about why they were selecting
14 the types of drugs for your cancer?

15 A. No.

16 Q. What type of cancer did you have?

17 A. I had Stage 3 breast cancer.

18 Q. Was there somebody on your behalf who was
19 talking with the doctors about why they were
20 prescribing the things that they were prescribing?

21 A. I don't know. I really don't know.

22 Q. Maybe I should ask, are you married?

Sandra Jean Leef

November 8, 2005

Chicago, IL

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1 insurance. Just the union covers me.

2 Q. And so he was covered by Humana, the kids
3 were covered by Humana, and you were covered by the
4 union?

5 A. The union.

6 Q. Which was Blue Cross/Blue Shield?

7 A. Yes.

8 Q. For major medical anyway?

9 A. Right.

10 Q. And you were not allowed to submit
11 anything --

12 A. Exactly.

13 Q. Let me just finish the question.

14 -- to Humana?

15 A. Right.

16 Q. Were you ever eligible for any other
17 coverage from any source?

18 A. No.

19 Q. Like Medicare?

20 A. No.

21 Q. Medicaid?

22 A. No.

Sandra Jean Leef

November 8, 2005

Chicago, IL

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1 Q. Well, at that time in 2001, there were a
2 lot of manufacturers of cyclophosphamide.

3 A. Okay.

4 Q. One of which was Bristol-Myers Squibb, my
5 client, and they had a trade name called Cytosan.

6 A. Don't know.

7 Q. Okay. So you don't know which
8 manufacturer --

9 A. No.

10 Q. -- you received?

11 A. No, I don't know. I couldn't tell you
12 what they were putting in my arm. You could bend me
13 backwards, I couldn't tell you. I don't recall
14 anyone ever mentioning what drugs were in the --
15 that were going through my arm.

16 Q. Okay. Do you know whether Dr. Debacker
17 checked which version?

18 A. I don't think so.

19 Q. Would that be true of all of the drugs
20 that are listed in your affidavit?

21 A. Yeah. I have no idea who the
22 pharmaceutical company that made them are. It

EXHIBIT 23

Constance E. Nelson

November 11, 2005

Crystal Lake, IL

1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MASSACHUSETTS

3

4

CERTIFIED COPY

5 IN RE PHARMACEUTICAL INDUSTRY

6 AVERAGE WHOLESALE PRICE MDL No. 1456

7 LITIGATION

8) CIVIL ACTION:

9 THIS DOCUMENT RELATES TO 01-CV-12257-PBS

10 ALL CLASS ACTIONS

11)

12

13 The discovery deposition of

14 CONSTANCE E. NELSON, taken in the above-entitled

15 case, before Karyn Chalem, CSR, RPR, on the 11th

16 day of November, 2005, at 10:30 o'clock a.m. at the

17 Holiday Inn, 800 South Route 31, Boardroom 202,

18 Crystal Lake, Illinois, pursuant to agreement of

19 counsel.

20

21 Reported by: Karyn H. Chalem

22 License No.: 084-004167

HENDERSON LEGAL SERVICES
202-220-4158

Constance E. Nelson

November 11, 2005

Crystal Lake, IL

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1 Q Do you have any supplemental
2 insurance that covers medical expenses?

3 A No.

4 Q Are you eligible for Medicare?

5 A Not yet.

6 Q So am I correct that you do not have
7 any health insurance through Medicare currently?

8 A No.

9 Q And you have not had insurance
10 through Medicare at any time during the last ten
11 years?

12 A No.

13 Q Are you eligible for Medicaid?

14 A No.

15 Q Do you receive any Social Security
16 benefits?

17 A Yes.

18 Q What benefits do you receive?

19 A Disability.

20 Q Describe the disability benefits you
21 receive from Social Security.

22 A I receive a check every month.

Constance E. Nelson

November 11, 2005

Crystal Lake, IL

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1 GSK, comma, Heparin, comma, Procrit, and
2 Dexamethasone Sodium?

3 A I would pay whatever was left after
4 the union had paid their amount.

5 Q Do you know who manufacturers the
6 drug Cytoxan?

7 A No.

8 Q So you don't know whether it's GSK,
9 as listed in paragraph 43, or if it's another
10 company?

11 A No, not really.

12 Q Is it your testimony that you took
13 and paid for the drugs listed in paragraph 43?

14 A Yes.

15 Q Do you know if you were treated with
16 Procrit?

17 A Yes.

18 Q How do you know that?

19 A I got sick, and that's one drug that
20 they gave me when I was sick.

21 Q When you say you got sick, am I
22 correct, Ms. Nelson, that you were diagnosed with

Constance E. Nelson

November 11, 2005

Crystal Lake, IL

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1 THE WITNESS: Yes.

2 BY MR. ROBACK:

3 Q What is your opinion of Dr. Heydari?

4 MS. FEGAN: Objection, relevance.

5 BY MR. ROBACK:

6 Q You can answer.

7 A Very good physician, surgeon.

8 Q What's Dr. Heydari's first name?

9 A I believe it's Amir.

10 Q Do you believe that Dr. Heydari did
11 his best to help you get well?

12 A Yes.

13 Q Do you believe that Dr. Heydari has
14 your best interests at heart?

15 A Yes.

16 Q Do you believe that Dr. Heydari
17 makes a profit on the drugs administered to you?

18 MS. FEGAN: Objection, calls for
19 speculation, but you can answer if you know.

20 THE WITNESS: I don't know.

21 BY MR. ROBACK:

22 Q Do you believe that Dr. Heydari

Constance E. Nelson

November 11, 2005

Crystal Lake, IL

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1 charges the same amount for medication that he pays
2 to receive that medication?

3 MS. FEGAN: Same objection.

4 THE WITNESS: I don't know.

5 BY MR. ROBACK:

6 Q What course of treatment did
7 Dr. Heydari recommend?

8 A I had surgery again to remove lymph
9 nodes, to have them tested. They took out more
10 breast tissue. I had four rounds of chemotherapy
11 and then I had radiation. And I'm also on a
12 prescription drug for keeping the estrogen out of
13 my body.

14 Q Do you believe the treatment
15 Dr. Heydari performed, including the drugs
16 prescribed, were based on what he believed to be in
17 your best medical interest?

18 A Yes.

19 Q Do you have a preference for where
20 you receive treatment?

21 A No.

22 Q Do you have a preference between